

Staff Report

City of Loma Linda

From the Department of Community Development

PLANNING COMMISSION MEETING OF FEBRUARY 1, 2006

TO: PLANNING COMMISSION

FROM: DEBORAH WOLDRUFF, AICP, DIRECTOR

SUBJECT: WORKSHOP/STUDY SESSION ON THE BROWN ACT & ETHICAL RULES; AND, "WELCOME TO THE COMMISSION!"

SUMMARY

The City Attorney will present an overview of the Brown Act and Ethical Rules as necessary training for the Planning Commissioners (see Attachment A, Summary of the Brown Act; and, Open Meetings and Conflicts of Interest). Following the presentation and discussion of the first topic, the Commission and staff will discuss the publication, "Welcome to the Commission." Copies of this document were previously distributed to the Commission and as such, it is referenced herein as Attachment B.

BACKGROUND

The State Legislature is constantly adopting new laws and/or making changes to existing laws. For this reason, staff and the City Attorney feel that annual training and discussion of the Brown Act (and related topics) is essential for the Planning Commission.

During the summer of 2005, Community Development staff purchased a number of resource pamphlets, materials, and books for the Planning Commission. Many of these resources provide guidance to persons that are new to a Commission, but are also helpful to the veteran commissioner. After reading "Welcome to the Commission," several Commissioners requested that the publication be discussed at a future meeting.

ATTACHMENTS

- A. Summary of the Brown Act; and, Open Meetings and Conflicts of Interest
- B. "Welcome to the Commission" (*previously distributed*)

Attachment A

**Summary of the Brown Act; and,
Open Meetings and Conflicts of Interest**

BROWN ACT

I. Background

The Ralph M. Brown Act (hereinafter Brown Act), California Government Code section 54950, guarantees the public's right to attend and participate in open forum meetings of local legislative bodies because of the vital role such legislative bodies play in bringing participatory democracy to the citizens of the State of California. As such, local legislative bodies are generally required to hold meetings in open forum. However, the Brown Act also recognizes the need for these bodies to meet in private in order to carry out their responsibilities.

The purpose of this appendix is to provide both CIF officials, and those who participate in the forums of CIF legislative bodies, with a comprehensive summary of the Brown Act and its application to the CIF.

II. The Brown Act Applies to Formal CIF State, Section, and League Meetings

California Education Code section 33353(a)(2) provides that the CIF must implement the following policy:

Require that all league, section, and state meetings affiliated with California Interscholastic Federation be subject to the notice and hearing requirements of the Ralph M. Brown Act (Chapter 9 commencing with Section 54950 of Division 2 of the Title 5 of the Government Code).

The Brown Act mandates that all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter (Govt. Code/54953). A legislative body is defined as the governing body of a local agency or any other local body created by state or federal statute or any commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body [Govt. Code 54952(a) and (b)]. In addition, the Brown Act defines a meeting as any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

Accordingly, CIF State, Section, and League meetings, conducted and ruled upon by a majority of the members of their respective legislative bodies must be conducted in accordance with the Brown Act which requires such meetings to be open and public.

III The Brown Act Does Not Apply to Advisory Committee or Public Meetings Attended by Members

Advisory committees that are comprised of less than a majority of the members of the legislative body are not subject to the Brown Act unless the advisory committee is a standing committee charged with continuing subject matter jurisdiction or whose meeting schedule is fixed by charter, ordinance, resolution, or formal action of the legislative body [Govt. Code/54952(b)]. Further, a majority of the members of a legislative body may attend community gatherings, public meetings, or purely social events without violating the provisions of the Brown Act, provided that such attendees do not discuss among themselves, other than as part of the

scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency (Govt. Code/54952).

IV The Brown Act Requires that the Meetings Agenda be Posted and Shall be Mailed Upon Request

The legislative body shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session, at least 72 hours before the meeting. The agenda shall specify the time and location of the meeting and shall be posted in a location that is freely accessible to members of the public. No action or discussion shall be undertaken on any item not appearing on the posted agenda but a member may direct staff to place a matter of business on a future agenda.

However, the legislative body may take action on items of business not appearing on the posted agenda under the following conditions: an emergency situation determined by a majority vote; a need to take immediate action determined by a two-thirds vote of the members present, or, if less than two-thirds of the members are present, by a unanimous vote; or that the item was continued to the meeting at which action is being taken (Govt. Code/54955.2). Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided for by this section (Govt. Code/54954). Every agenda shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2 (Govt. Code/54954.3). In addition, members of the public shall not be required to register, provide any information, or fulfill any condition precedent to their attendance at an open and public meeting. If any such information is requested, such a request shall clearly state that providing such information is voluntary, and that all persons may attend the meeting regardless of whether or not such information is provided (Govt. Code/54953.3).

The legislative body shall send a copy of the meetings agenda, not prior to the day of the meeting, to any person making a written request for a copy of the agenda provided that the meeting is subject to the Brown Act. A fee for mailing the agenda may be charged but shall not exceed the cost of providing the service. The actions of the legislative body taken at the meeting for which the copy of the meetings agenda was requested will not be invalidated if the person requesting a copy fails to receive it (Govt. Code/54953.1).

V. The Brown Act Permits the Public to Tape Record Meetings that are Open and Public

Persons attending an open and public meeting of a legislative body may record the proceedings with an audio or video tape recorder unless the legislative body reasonably determines that the recording constitutes a persistent disruption of the proceedings. An audio or video tape record of an open and public meeting made by the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 commencing with Section 6250 of Division 7 of Title 1), but may be erased or destroyed within 30 days of the recording. The legislative body shall also permit the broadcast of its open and public meetings unless the legislative body reasonably determines that the broadcast constitutes a persistent disruption of the proceedings (Govt. Code/54953.5).

VI. The Brown Act Permits Legislative Bodies to Meet in Closed Session

The legislative body may meet in closed session when reviewing matters involving the following:

License/Permit Determination (Govt. Code/54956.7); Conference with Real Property Negotiators (Govt. Code/54956.8); Conference with Legal Counsel - Existing and Anticipated Litigation [Govt. Code/54956.9 (a) and (b)]; Liability Claims (Govt. Code/54956.95); Threat to Public Services or Facilities and Public Employee Appointment, Evaluation and Discipline (Govt. Code/54957); Conference with Labor Negotiators (Govt. Code/54957.6); Case review/Planning (Govt. Code/54957.8); Report involving Trade Secret and Hearings (Health & Safety Code/1461, 32106, and 32155; Govt. Code 37606 and 37624.3); and a Charge or Complaint Involving Information Protected by Federal Law (Govt. Code/54956.86).

Action taken in closed session shall be publicly reported by the legislative body in accordance with the provisions of this section (Govt. Code/54957.1). The legislative body may designate a staff member to attend each closed session to keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book is not a public record subject to inspection pursuant to the California Public Records Act.

VII. The Brown Act Does Not Apply to CIF State and CIF Section Hearings and Appeals

The Family Educational Rights and Privacy Act (FERPA) restricts access to student educational records [20 U.S.C./1232(a)]. In addition, sections 49060-49079 of the California Education Code were enacted to manifest compliance with FERPA's statutory requirements concerning the privacy of student records. Moreover, CIF State and CIF Section Hearings are not meetings as defined by Govt. Code/54952.2(a) because such hearings are not conducted or ruled upon by a majority of the members of a legislative body. Rather, such hearings are held and conducted by either a single hearing officer or a hearing panel which are randomly selected for each individual hearing. Therefore, the Brown Act does not apply to CIF State and CIF Section hearings because such hearings may involve the presentation of confidential student information and are not conducted in a manner subject to the Brown Act.

OPEN MEETINGS AND CONFLICTS OF INTEREST

A Presentation to the Planning Commission
of the City of Loma Linda

by

Richard E. Holdaway, City Attorney

February 1, 2006

Remember the importance of public perception:

■ **Egotist, *n.* “A person of low taste, more interested in himself than in me.”**

—Ambrose Bierce,
The Devil's Dictionary



BROWN ACT

Purpose

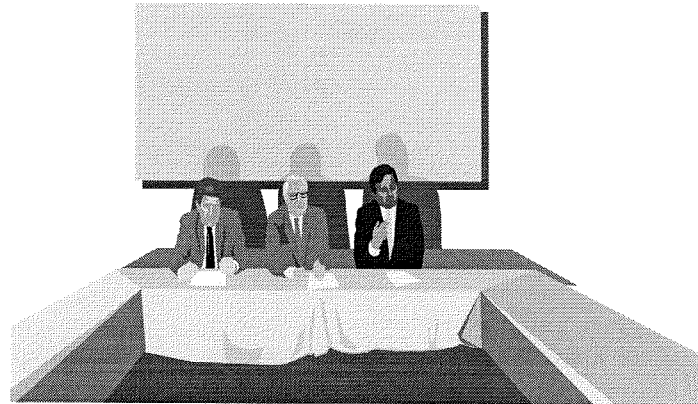
The California open Meeting Laws, or “The Brown Act,” was adopted to ensure that almost all aspects of the decision-making process of legislative bodies of local agencies are conducted in public and open to public scrutiny. It is codified at Government Code §54950 *et seq.*

INTENT

- **54950.** In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

BROWN ACT APPLIES TO:

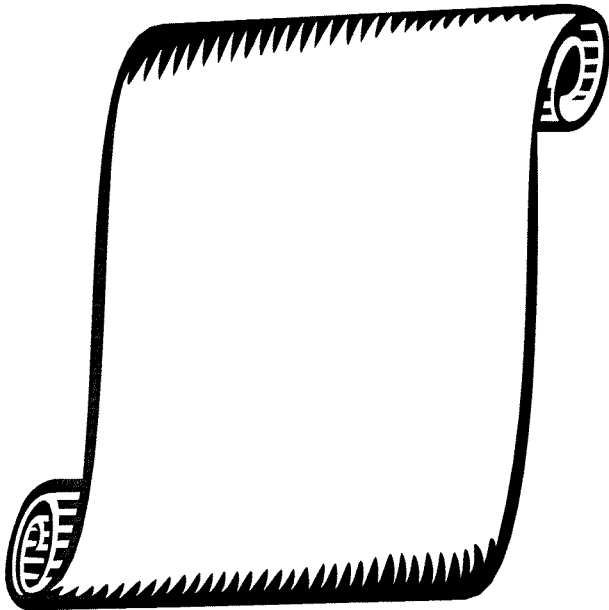
- *City Council*
- *Planning Commission*
- *Commissions, committees, boards, or other bodies of a local agency, whether permanent or temporary, decision-making or advisory*
- *Formal and informal meetings*
- *Persons elected to legislative bodies even prior to taking office*



BROWN ACT

- Agenda Posting Requirements
- Public Meetings and Exceptions
- Public Participation
- Documents at Public Meetings
- Closed Sessions
- Penalties

AGENDA POSTING REQUIREMENTS



- Reasonable Description of Proposed Actions
- Posted 72 Hours Before Regular Meeting
- Posted 24 Hours Before Special Meeting
- Specify Time and Location of the Meeting

ADDING NON-AGENDA ACTIONS

- Unexpected Need for Immediate Action
- An Emergency Situation Exists Severely Impacting Public Health or Safety or Disruption of Public Facilities
- Action Item Continued From a Properly Posted Meeting Occurring Less than 5 Days Before

Say Exactly What You Mean:

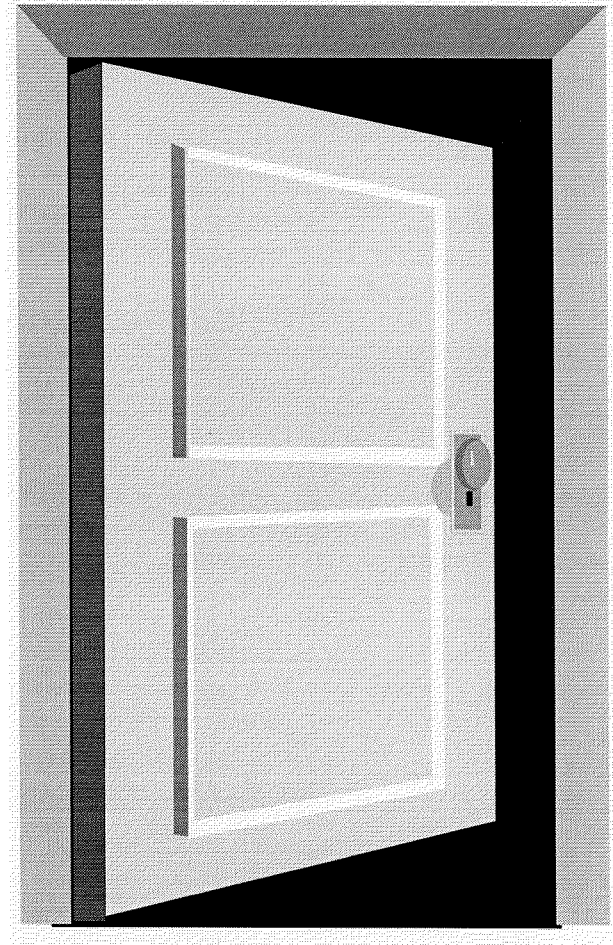
*Business Slogan of Mattie's Restaurant
and Yogurt Palace, Decatur, Texas:*

“An Alternative to Good Eating”



BROWN ACT

- Government Code Section 54953:
 - *All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.*



PUBLIC MEETINGS

- All Meetings Must Be Public
- “Meeting” Means:
 - Any Congregation or Consultation of a Majority of the Body
 - To Hear, Discuss, Decide, or Deliberate
 - Any Item Within the Jurisdiction of the Body
 - Prohibits Reaching or Seeking “Collective Concurrence” of a Majority
 - Prohibits Use of Third Parties or Indirect Means

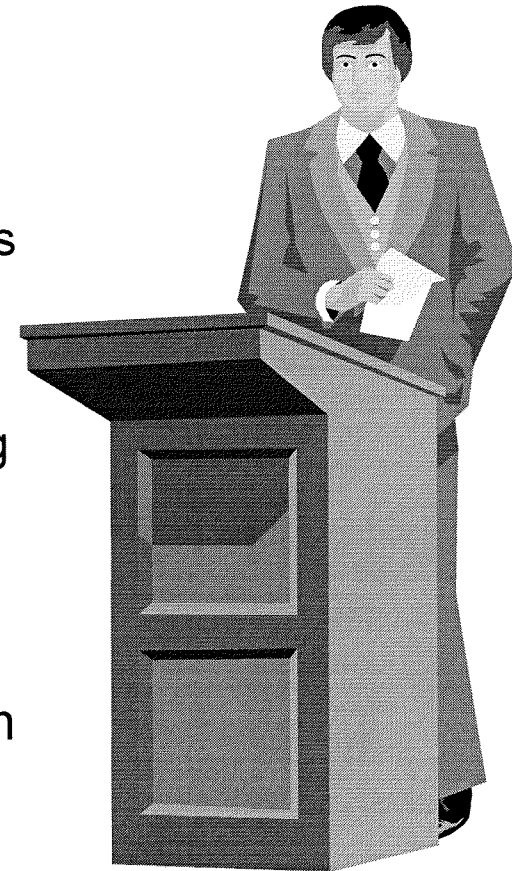
EXCEPTIONS

- Authorized Closed Sessions
- Individual Contact With Constituents
- Certain Public Meetings - Provided There is No Discussion of Specific City Business, Other Than as Part of the Scheduled Program.
 - Conferences
 - Community Meetings Organized by Others
 - Meetings of Another Governmental Agency
 - Purely Social or Ceremonial Events

PUBLIC PARTICIPATION

■ Public Comments

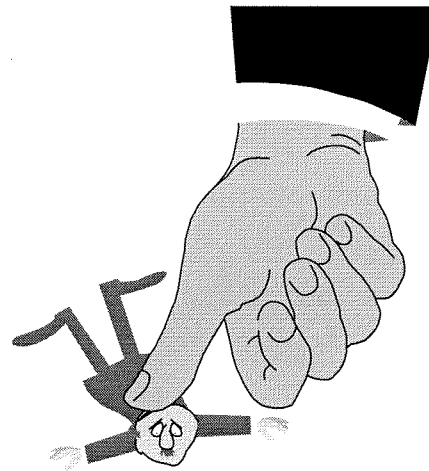
- Matters on the Agenda
 - Must be Heard Before Body Makes Decision
- Matters Not on Agenda
 - May be Scheduled Anytime During Meeting
 - “Brief” Responses Permitted
- May Set Reasonable Time Limits
- May Not Prohibit Relevant Criticism



Practice and Use the Tools of Legislative Debate

I've tried everything else to convince you.
Now I'm going to be sensible."

-unnamed congressman during House debate



DOCUMENTS AT PUBLIC MEETINGS

- If Documents are Part of the Packet, then Copies are to be Made Available at the Meeting, or if Requested, at the Time They are Distributed to a Majority of the Legislative Body
- If Documents are First Made Available to the Body at the Meeting, then Copies are to be Made Available at the Meeting



CLOSED SESSIONS

- Proper Closed Session Matters
 - License/Permit Determination
 - Conference With Real Property Negotiators
 - Conference With Legal Counsel
 - Existing Litigation
 - Anticipated Litigation



CLOSED SESSIONS

- Personnel Matters

- Complaint Against Employee

- Appointment, Hire, Evaluation, Discipline, or Discharge

- Conference With Labor Negotiators

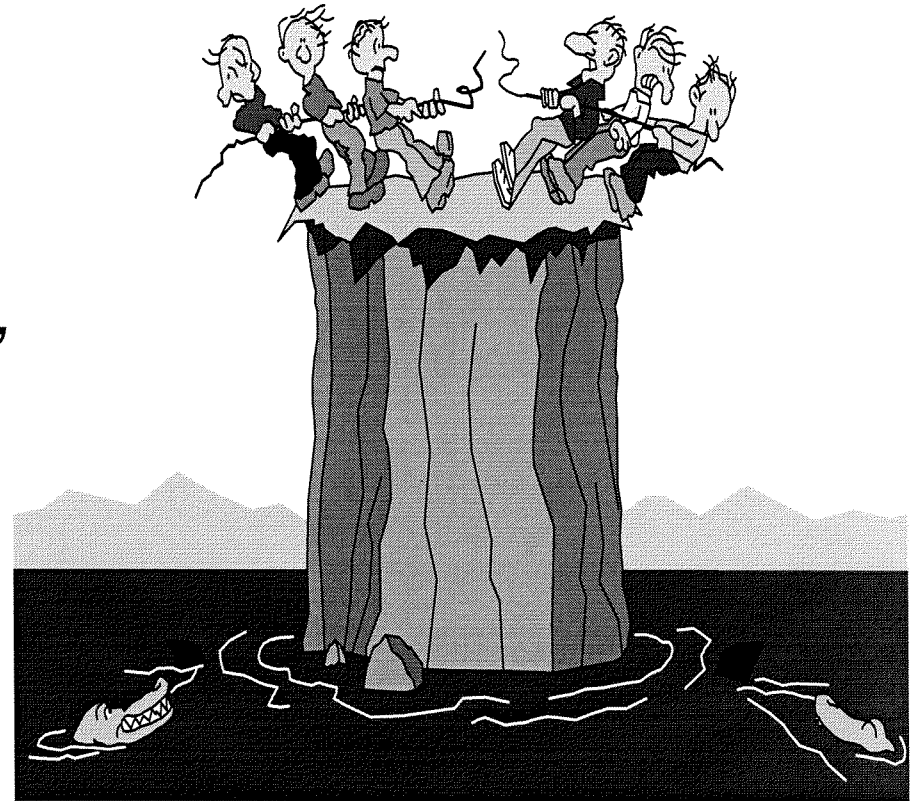
- Threats to Security of Public Services or Facilities

- “Final Actions” Must Be Announced in Open Session

A Good Public Servant Practices the Art of Compromise

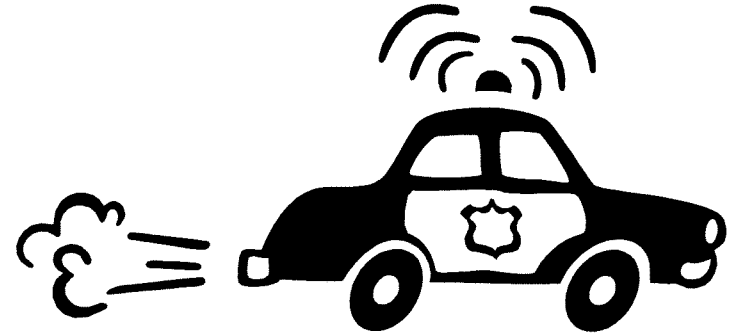
*"I want this to be fifty-
fifty like I said. But I
want you to see that I
get the best part of it."*

-directions from
Samuel Goldwyn to
his staff



PENALTIES

- Invalidation of Any Action Taken (54960.1)
- Criminal Misdemeanor (54959) If Member Was:
 - In Attendance at Meeting
 - Action Was Taken (Whether or Not Member Participated)
- Civil Action for Injunction (54960)
- Court Ordered Taping of Closed Sessions (54960)
- Attorney's Fees and Court Costs (54960.5)



“I haven’t committed a crime. What I did was fail to comply with the law.”

***David Dinkins, New York City
mayor, answering accusations that
he failed to pay his taxes***

CONFLICT OF INTEREST LAWS

- Disqualification from Participation
- Contractual Conflicts of Interest
- Common Law Bias
- Campaign Contributions
- Incompatible Offices
- Free or Discounted Travel

Remember That Personal Financial Interest Colors Judgment

“My doctor gave me six months to live, but when I couldn’t pay the bill, he gave me six more.”

- Walter Matthau



DISQUALIFICATION FROM PARTICIPATION

- The Political Reform Act:

- No Public Official, At Any Level, Of State Or Local Government Shall Make, Participate In Making or In Any Way Attempt To Use His Official Position To Influence A Governmental Decision I Which He Knows Or Has Reason To Know He Has A Financial Interest. (Government Code §87100)

DISQUALIFICATION FROM PARTICIPATION

- A Public Official Has a Financial Interest In A Decision If It Is Reasonably Foreseeable That The Decision Will Have A Foreseeable And Material Financial Effect On The Official Or One Or More Of His Or Her Economic Interests. (Government Code §87103; 2 Cal. Code of Regs. §18700(a))

FINANCIAL INTEREST AND ECONOMIC INTEREST

- Financial Interest And Economic Interest Mean Different Things
- Financial Interest: A Public Official Has A Financial Interest If It is Reasonably Foreseeable That The Decision Will Have A Material Effect On The Official's Economic Stake
- Economic Interest: A Label Applied To The Particular Types Of Interests Recognized By Law As Potential Sources Of A Conflict Of Interest

ECONOMIC INTERESTS

■ There Are 6 Basic Types Of Economic Interests:

- economic interest in a business entity in which the official has a direct or indirect investment worth \$2000 or more
- economic interest in a business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management

ECONOMIC INTERESTS

- economic interest in real property in which the official has a direct or indirect interest of \$2000 or more
- economic interest in any source of income which aggregates to \$500 or more within 12 months prior to the decision
- economic interest in any source of gifts to the official if the gifts aggregate to \$340 or more within 12 months prior to the decision
- economic interest in official's own personal expenses, income, assets, or liabilities, as well as those of the official's immediate family

EIGHT STEP ANALYSIS FOR CONFLICT OF INTEREST

- Is A Public Official Involved?
- Is The Public Official Making, Participating In Making, Or Using Or Attempting To Use Official Position To Influence A Government Decision?
- Does The Official Have A Statutorily Defined Economic Interest?
- Is The Economic Interest Directly Or Indirectly Involved?
- Is The Economic Interest Material?
- Is It Reasonably Foreseeable That The Decision Will Have A Material Financial Effect On An Economic Interest?
- Will The Decision's Financial Effect On The Official's Economic Interest Differ From The Effect On The Public Generally?
- Is The Official Legally Required To Participate?

CONFLICTS OF INTEREST

■ Disqualification

– General Rule:

Disqualification Should Occur
if the Proposed Action Could
Have:

- A Material Effect
- Directly or Indirectly
- On an Economic Interest of the
Official, Spouse, or Dependant



CONFLICTS OF INTEREST

- Disqualified If Decision Could Effect:

- Business Interest:

- Investment in the Business Worth \$2000 or More
 - Director, Officer, Partner, Trustee, Employee, or Management Position - Whether Paid or Not

- Real Property:

- Interest in the Property Worth \$2000 or More
 - Mortgages, Options to Buy, and Leasehold Interests Are Considered to be Interests in Real Property
 - Official's Real Property is Located Within 500 Feet of the Affected Property

CONFLICTS OF INTEREST

■ Income and Gifts:

- Gifts Aggregating \$340 or More in Past Twelve Months
- Also Includes Community Property Interest Income of Spouse
- Indirect Interest in Business Entities and Real Property:
- Investments in Business Entities Worth \$1000 or More Owned by Spouse or Dependant Children
- Investments in Real Property Worth \$2000 or More Owned by Spouse or Dependant Children

CONFLICTS OF INTEREST

- Material Effect:

- There are Different Rules for Directly and Indirectly Involved Economic Interests
- Materiality Standards are Varied and Complex

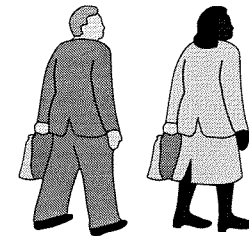
CONFLICTS OF INTEREST

- If Disqualified:

- You May Not Participate In or Attempt to Influence Any Potential Decisionmaker or Advisor

- Public Meetings:

- Must Announce Conflict
 - Must Retire From the Room



CONFLICTS OF INTEREST

- Not Disqualified If the Effect On You Is the Same as the Effect on Public in General
- Penalties:
 - Violations of the Political Reform Act Can Result In Severe Penalties. These May Include Administrative Penalties, Civil Penalties Imposed by The FPPC, or Criminal Sanctions Including Monetary Fines or Imprisonment

CONFLICTS OF INTEREST

■ Contractual Conflicts of Interest

- Government Code Section 1090 *et seq.* Deals With Public Contracts In Which a Public Official Has a Financial Interest. These Provisions Are In Addition to the Restrictions of the Political Reform Act

CONFLICTS OF INTEREST

- General Rule:

- Public Officials Shall Not Have a Financial Interest In **Any Contract** Made by Them In Their Official Capacity, or By Any Board of Which They Are a Member (Gov. Code Sec. 1090)

- Prohibits **Any** Financial Interest of Self or Spouse
 - “Opportunity to Influence” Illegal Even If Not Used
 - Officials Appointed by City Council Are Deemed To Have an Opportunity to Influence

1090 CONFLICTS OF INTEREST

– Penalties:

- Public Agency Keeps Benefit of the Contract
- Official Repays All Benefits Received, Plus Interest
- Official May Be Banned for Life From Holding Public Office
- Official May Go to Prison



Common Law Bias

- Common Law Fiduciary Duty
- Due Process Principles require a decision-maker to be fair and impartial when sitting in a “quasi-judicial” capacity applying generally adopted standards to specific situations. (CUP’s, PPD’s, Variances, etc.)
- Party bias—animosity or loyalty
- Factual bias—“ex parte communications”
- Pam’s “smell test”

CONFLICTS OF INTEREST

■ Campaign Contributions:

– Disqualification If:

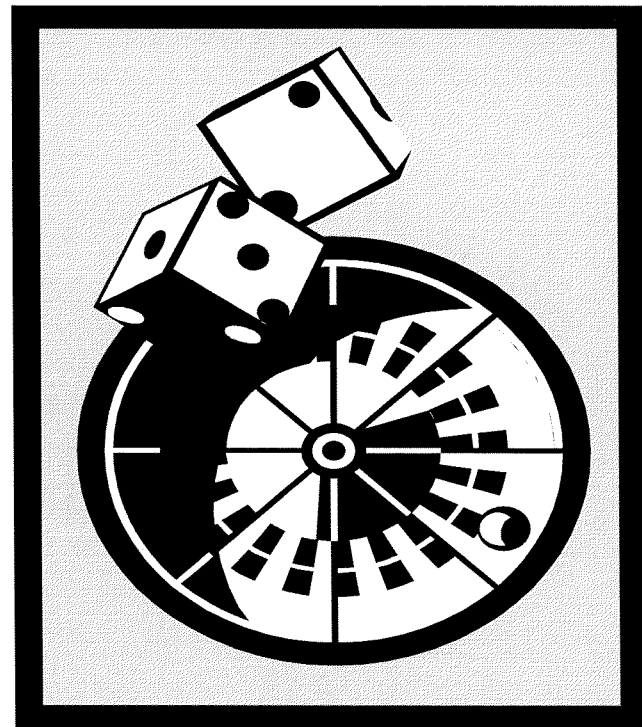
- An Official Receives More Than \$250 in Campaign Contributions During the Previous 12 Months; and
- The Contributor is a Party or Participant in a License, Permit, or Entitlement Proceeding While the Proceeding is Pending and for Three Months Thereafter



Should I take a risk?

*“Don’t forget folks --
the less you bet
the more you lose
when you win!”*

Pitch heard from a
dealer at the
Landmark Casino,
Las Vegas



CONFLICTS OF INTEREST

■ Incompatible Offices

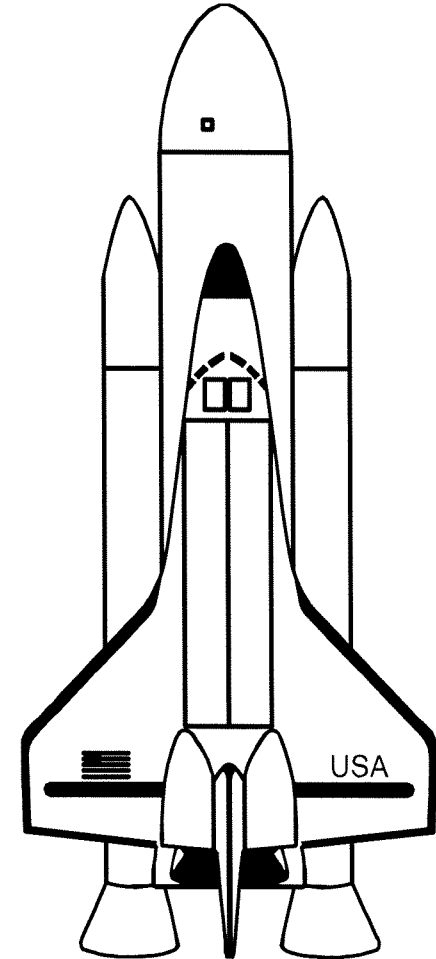
- May Not Hold Two “Public Offices” at The Same Time if There Is a Potential or Actual Conflict in Duties or Loyalties
- Acceptance of Second Office Acts as a Resignation of the First Office



CONFLICTS OF INTEREST

■ Free or Discounted Travel

- Constitutional Prohibition (Article 12, Section 7)
- May Not Receive Free or Discounted Travel, or Free Upgrades from Any Transportation Company
- Acceptance Shall Work a Forfeiture of Office
- Does Not Apply to Travel Benefits Available to the General Public



Advice On Lawmaking:

- **“Laws too gentle are seldom obeyed; too severe, seldom executed.”**

■ Benjamin Franklin



- **“That Government is the strongest of which every man feels himself a part.”**

■ Thomas Jefferson

Attachment B

**Welcome to the Commission
(Previously Distributed)**